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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES  
LITIGATION

Case No. 3:18-cv-04865-EMC

**PLAINTIFF'S EMERGENCY  
MOTION TO COMPEL DAVE ARNOLD  
TO APPEAR ON JANUARY 27, 2023**

PLEASE TAKE NOTICE that as soon as this matter may be heard, in Courtroom 5 – 17th Floor of the United States Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Edward M. Chen presiding, Plaintiff, through his counsel, will move, and hereby does move to compel the attendance of Mr. Dave Arnold on January 27, 2023. On January 18, 2023, Plaintiff disclosed David Arnold (and his exhibits). Defendants served counter-designations and objections. The Court issued rulings on these disclosures and objections on January 24, 2023. Having successfully worked through a backlog of witnesses due to extensive cross-examinations, Plaintiff intends to call Mr. Arnold tomorrow in light of the jury's availability and willingness to stay late. Despite this, Defendants have informed Plaintiff that they have unilaterally released Mr. Arnold from his subpoena and is no longer available to testify. Accordingly, Plaintiff's motion is dire.

This motion is based on the Memorandum of Points and Authorities below, and any other matters properly before this Court.

Pursuant to Paragraph 11 of the Court's Civil Standing Order, Plaintiff also submits a proposed order.

### **ISSUES TO BE DECIDED**

- 1) Whether the Court should compel Mr. Dave Arnold's compliance with his subpoena given the jury's willingness to stay late on January 27, 2023?

### **MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff subpoenaed Mr. Dave Arnold on July 26, 2022. On January 18, 2023, Plaintiff disclosed David Arnold (and his exhibits). Defendants served counter-designations and objections. The Court issued rulings on these disclosures and objections on January 24, 2023. Having successfully worked through a backlog of witnesses due to extensive cross-examinations, Plaintiff intends to call Mr. Arnold tomorrow in light of the jury's availability and willingness to stay late.

Plaintiff's prior discussions regarding witnesses to be called tomorrow was before the Court informed us that there would be additional court time due to the jury's willingness to stay late. With the availability of additional time, it is obvious that additional witnesses will need to be called. Plaintiff accordingly notified Defendants the morning of January 26, 2023 of their intention to call Dave Arnold and Steven Heston.

Defendants notified Plaintiff, that because Plaintiff did not inform Defendants that Mr. Arnold would be called on January 27, 2023, they have unilaterally released him, and he is no longer available to testify. Accordingly, Court intervention is necessary to compel Mr. Arnold's appearance tomorrow, January 27, 2023.

Dave Arnold has been notified as a potential witnesses for several days now and his exhibits disclosed and objections lodged. Mr. Arnold is under subpoena and Defendants have no authority to unilaterally release him. If time permits on January 27, 2023, Plaintiff will call Mr. Arnold. If Mr. Arnold does not appear he will be in violation of his subpoena and a missing witness instruction should be given against Defendants as a result of his absence.

1 Dated: January 26, 2023

Respectfully submitted,

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